THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 23457 OF 2004

24th February, 2006

Between:

Roop Singh …Petitioner

A N D

1. The Govt. of A.P., rep. by its Secretary

Energy (Energy PR.IV) Department,

Secretariat, Hyderabad and Others …Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 23457 OF 2004

O R D E R :

1. This writ petition has been filed by Roop Singh with a prayer to issue a writ order or direction more particularly one in the nature of writ of certiorari calling for the records relating to the Notification issued under Section 4(1) and Declaration issued under Section 6 of the Land Acquisition Act and quash the same.

2. The petitioner is the owner and possessor of the land bearing Survey No. 42, admeasuring Ac.4-03 guntas situated at Teegalpahad village, Mancherial Mandal, Adilabad District. The General Manager, Singareni Collieries Company Limited, Srirampur, Adilabad District-2nd respondent made requisition to the State Government for acquisition of certain extent of land, situated at Teegalpahad village, Mancherial Mandal, for construction of Sand Stowing Plant and formation of approach Road at SRP-1 Incline under the provisions of the Land Acquisition Act (herein after referred to as " L.A.Act" for brevity). In pursuance of the said requisition, the State Government issued notification under Section 4(1) of the L.A. Act and published the same in Adilabad District Gazette vide No. ADB/5/2004-1, dated 7-1-2004. Declaration under Section 6 of the L.A.Act came to be published in Andhra Pradesh District Gazette vide No. ADB/5/2004-2, dated 7-1-2004. Since Notification under 4(1) and Declaration under 6 of the L.A.Act were published in the A.P. Gazette on the same day, according to the petitioner the same were not in accordance with the provisions of the L.A.Act and therefore, they are liable to be quashed.

3. The petitioner also questioned the action of the State Government for dispensing with enquiry under Section 5-A of the L.A.Act by invoking provisions of sub-section 4 of Section 17. It is alleged that the respondents are contemplating to utilize the entire extent of Ac. 10-00 under the guise of acquiring part of it only i.e. Ac. 04-07 guntas for the purpose of construction of Sand Stowing Plant and formation of approach Road to SRP-1 Incline.

4. Respondent 2 filed counter affidavit. One E.V. Narasimha. Estates Officer, has sworn to the Counter affidavit filed on behalf of the 2nd respondent. It is stated in the counter affidavit that the lost of the dates of the publication will be deemed to be the date of publication of the notification under Section 4(1) and therefore, declaration effected in A.P. Gazette on 7-1-2004 under Section 6 of the L.A.Act cannot be termed as simultaneous. It is further stated that the respondents have already taken possession of the land in view of the urgency clause being invoked and thus the petitioner cannot question the declaration under Section 6 of L.A.Act. I deem it appropriate to refer paras 7 and 8 of the counter affidavit and they are thus:-

> "That a part, it is admitted by the petitioner in his affidavit, the urgency clause has been invoked as stated by him in para-6 of the affidavit. In this regard, the legal position has been settled by this Hon'ble Court in the case of "Manyam Paramayya and

> others….Writ Petition No. 20461/1996" which was decided on 13-11-1998 and his lordships was pleased to hold in para-3 of the judgment as follows:
>
> "The Petitioner seeks to challenge the acquisition proceedings on several grounds. Firstly, the simultaneous issuance of the notification under Section 4(1) of the Act on24-2-1996 is bad. It is however conceded that is now settled legal position there is no bar against the simultaneous issuance of 4(1) notification and section 6 Declaration in case where the urgency clause is invoked".
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> Since the petitioner has fairly admitted the urgency clause has been invoked in view of the judgment of this Hon'ble Court there can be a simultaneous publication also even though the same has not been done in the instant case as stated in the previous paras".

5. One B.S.V.V.S. Murthy, Revenue Divisional Officer, Mancherial Division, has sworn to the counter affidavit filed on behalf of Respondents 3 and 4. The counter affidavit in brief is :-

The General Manager, Singareni Collaries Company Limited, Srirampur Area, has filed requisition for acquisition of land in Sy.Nos. 27,42,47,49 and 57 situated at Teegalpad village of Mancherial Mandal for construction of sand stowing plant and approach road, and requested the Government to initiate Land Acquisition Proceedings by invoking the urgency clause as the land is required urgently. Thereupon, the Mandal Revenue Officer, Mancherial has been asked to submit a preliminary Enquiry Report and get the area sub-divided through Mandal Surveyor. The Mandal Revenue Officer, Mancherial had sent the Sub-Division Record to the Assistant Director, Survey and Land Records, Adilabad. Proposals were submitted to the Collector, Adilabad for recommending to the Government for approval of Notification under Section 4(1) by invoking the urgency clause under Section 17(4) of the Land Acquisition Act, 1894 and the Declaration under Section 6 of the L.A. Act, 1894. The Government approved the Notification under Section 4(1) of the Land Acquisition Act, 1894 and dispensed with the enquiry under Section 5-A of the Land Acquisition Act, 1894 vide G.O.Rt.No.289, Energy (PR.IV) Department, dated 20-12-2003 and the Declaration under Section 6 of the Land Acquisition Act, 1894 vide Govt. Memo No. 3283/PR.IV/A2/2003-2, dt. 22-12-2003. The notification and the

Declarations have been published in the A.P. State Gazette No. ADB/5/2004-1 & 2, dt. 7-1-2004. The Notification under Section 4 (1) of the Act in Telugu version has been published in Eenadu Telugu Daily on 13-1-2004 and in English version in Deccan Chronicle on 19-1-2004. The declaration under Section 6 of the Act in Telugu version has been published in Eenadu Telugu Daily on 15-1-2004 and in English version in Deccan Chronicle on 21-1-2004. The substance of the Draft Notification and Draft Declaration have been published in the village and locality on 1-6-2004 and 2-6-2004 respectively through the Mandal Revenue Officer, Mancherial. Notice in Form NO.6 as required under Section 9(1) and 10 of the L.A. Act, 1894 has been issued on 1-5-2004 and sent to the Mandal Revenue Officer, Mancherial for publication in the village and the locality. The same had been published on 1-5-2004 and possession of the land was taken over on 14-12-2004.

6. Heard Sri.V.Ravi Kiran, learned counsel appearing for the petitioner and learned Government Pleader for Land Acquisition appearing for the respondents 1, 2, 3 and 5 and learned Standing Counsel appearing for 2nd respondent.

7. Learned counsel appearing for the petitioner submits that Sec.6 declaration is invalid since the same has been published simultaneously with the publication of Sec.4(1) notification in Adilabad District Gazette. In support of his submission, reliance has been placed on a decision of the Division Bench of this Court in KATARI SATYANARAYANA v. DISTRICT COLLECTOR, KRISHNA AT MACHILIPATNAM.

8. Learned Government Pleader for Land Acquisition appearing for respondents 1, 2, 3 and 5 submits that simultaneous publication of Sec.4(1) notification and Sec.6 declaration is permissible under Law on invocation of urgency clause under section 17(4) of the Land Acquisition Act. Reliance has been placed on decisions of this Court in VANA ADAMMA V. DISTRICT COLLECTOR, SRIKAKULAM and MANYAM PARAMAYYA V. GOVT. OF A.P.

9. Learned Standing Counsel appearing for the 2nd respondent submits that once urgency clause is invoked under section 17(4) and enquiry u/s 5-A is dispensed with Sec.6 declaration can be made before the lost of three modes of publication of Sec.4(1) notification.

10. It is an undisputed fact that Sec.4(1) notification and Sec.6 declaration came to

be published in Adilabad District Gazette on 7.1.2004. In such a situation the question that requires to be resolved in this writ petition is – whether Sec.6 declaration is valid? Undisputedly, enquiry u/s 5-A of the Land Acquisition Act has been dispensed with by invoking urgency clause u/s 17(4) of the Land Acquisition Act.

11. Learned counsel appearing for the petitioner by placing reliance on a Division Bench decision of this court in KATARI SATYANARAYANA v. DISTRICT COLLECTOR, KRISHNA AT MACHILIPATNAM submits that a reading of two sub sections i.e. 17(4) and Sec.4(1) makes it clear that the date of publication of the notification would be the last of the dates of publication of Sec.4(1) notification in the gazette, publication of the said notification in two daily newspapers circulating in the locality and of publication of subsistence of notification in the locality. Obviously the last date of publication of the notification above referred to can only be after publication of the draft notification in the gazette. Therefore, declaration u/s 6(1) can validly be published only after the date of publication of the notification referred to in sub-sec.(1) of Sec.4. In the cited case the facts are that the Government proposed to acquire land of an extent of Ac.2-00 in Survey No.69 of Gudivada village, Gudivada Taluk, Krishna District. Draft notification u/s 4(1) of the Land Acquisition Act in respect of the said land was published in the Gazette on 9.11.1983. Enquiry under section 5-A of the Act was dispensed with under Section 17(4) of the Act and declaration under Sec.6 was also published simultaneously with the notification u/s 4(1). Validity of simultaneous publication of Sec.4(1) notification and Sec.6 declaration came to be questioned. It was contended before the Division Bench that the acquisition proceedings would become illegal in case of simultaneous draft notification u/s 4(1) and draft declaration u/s 6. The Division Bench after survey of Sec.4, 6 and 17 of Land Acquisition Act has observed as follows:

> " A reading of these two sub-sections makes it clear that 'the date of publication of the notification' would be the last of the dates of publication of Sec.4(1) notification in the Gazette, publication of the said notification in two daily newspapers circulating in the locality and the date of publication of substance of such notification in the locality. Obviously last of the dates of the publication of the notification above referred to can only be after publication of the draft notification in the Gazette. Therefore, declaration under section 6(1) can validly be published only after the date of publication of the notification referred

to in sub-section (1) of Sec.4. As such, simultaneous publication of declaration under S.6(2) and draft notification under S.4(1) would be in violation of sub-section (1) and would, therefore, render the publication of the declaration under S.6(2) invalid and illegal. We are supported in our view by a recent judgment of the Supreme Court in STATE OF U.P. v. RADHEY SHYAM NIGAM. In that case for purposes of different housing schemes, notifications were issued for acquiring lands. The draft notification under S.4(1) and the declaration under Sec.6 in question were published simultaneously on 6th May, 1985. A Division Bench of the High Court of Allahabad before which the validity of the acquisition proceedings was challenged, upheld the objection that simultaneous publication of declaration under Sec.6 with the draft notification under S.4(1) was illegal, and quashed the declaration under S.6 of the Act. On appeal to the Supreme Court, the judgment of the High Court was confirmed and it was observed:

'The words have to be understood in their usual and most known signification. If that be so, then the legislature must have had some intention in choosing the expression 'after' before 'date of publication of the notification' in sub-section (4) of S.17 of the Act while making amendment by Amending Act No.68 of 1984. It is true that there were some changes giving the meaning of the date of the publication in S.4(1) and (2) as well as S.6(2) of the Act. But for that, there was no need for the use of the expression 'after the date'. If that be the position, then we must accept the interpretation put upon the amended clause by the High Court in the judgment under appeal."

From the above discussion it follows that the declaration under S.6 of the Act published in the Gazette on 9.11.1983, is illegal and invalid and it is accordingly quashed. It would be open to the authorities to issue fresh declaration under S.6 of the Act in accordance with law keeping in view the period of limitation mentioned in Section 6 of the Act.""

12. The learned Standing Counsel appearing for the 2nd respondent submits that Sec.6 declaration can be made before expiry of any one of the three modes of publication of notification u/s 4(1). Much emphasis has been laid on the decision of Supreme Court in BIHAR STATE HOUSING BOARD v. STATE OF BIHAR. In the cited case it has been held that the mode of publication of declaration prescribed under section 6(2) are conjoint and cumulative and all of them must be resorted to and completed and the date of publication of declaration under Section 6 of L.A.Act

has to be determined as the last of the dates of publication and the giving of public notice. In the cited case, the decision was on different aspect of the problem raised in the factual position presented in that case and, did not deal with the question of nature involved in the present case.

13. In MANYAM PARAMAYYA V. GOVT. OF A.P.(3) the validity of Sec.17(5) introduced by the State Amendment came up for consideration. It was contended before the learned single Judge that the acquisition proceedings were invalid since the possession of the lands was not taken within three months from the date of notification as required u/s 17(5). Relying on the Division Bench judgment of this Court in VANA ADAMMA V. DISTRICT COLLECTOR, SRIKAKULAM the learned single Judge held in the above referred case that Sec.17(5) introduced by the State Amendment has become repugnant and void after the Central Amendment Act, 1984 and cannot be enforced.

14. It is evident from the facts of the case that Sec.4(1) notification and Sec.6 declaration came to be notified in Adilabad District Gazette on 7.1.2004. It has been held by the Division Bench of this Court in Katari Satayanarayana's case(4) that simultaneous publication of Sec.6(2) declaration and section 4(1) notification would be in violation of sub-section (1) and would therefore render the publication of declaration u/s 6(2) as invalid and illegal.

15. From the above discussion, it follows that the declaration under Section 6 of the Land Acquisition Act published in the gazette on 7-1-2004 is illegal andinvalid and it is accordingly quashed. It would be open to the authorities to issue fresh declaration under Section 6 of the Land Acquisition Act in accordance with Law keeping in view of the period of limitation mentioned in Sec. 6 of the Land Acquisition Act.

16. The Writ Petition is allowed to the extent indicated above. No costs.

(B.Seshasayana Reddy,J)

24th February,2006

KM/TNB

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W.P.No. 23457 OF 2004

Dt: 24-02-2006